

**BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Federal-State Joint Board on) CC Docket No. 96-45
Universal Service)

TO: The Federal-State Joint Board on Universal Service

**REPLY COMMENTS OF THE
OREGON TELECOMMUNICATIONS ASSOCIATION**

I. INTRODUCTION

The Oregon Telecommunications Association (OTA) welcomes the opportunity to submit comments in this Reply Comment round. OTA's Reply Comments are directed to general concepts that are contained in the four proposals that several Joint Board Members and Staff have developed. These proposals are the State Allocation Mechanism: A Universal Service Reform Package or "SAM" proposed by Joint Board Member Ray Baum; the Three Stage Package for Universal Service Reform or "TSP" proposed by Joint Board Member Billy Jack Gregg; the Holistically Integrated Package or "HIP" proposed by Commissioner Robert Nelson; and the Universal Service Endpoint Reform Plan or "USERP" proposed by Joel Shifman, Peter Bluhm and Jeff Pursley.

OTA's membership is made up largely of rural telephone companies that are designated as eligible telecommunications carriers (ETCs) for their service territories.¹ These companies receive varying amounts of support from the federal universal service fund.

¹ OTA's members participating in these Reply Comments are as follows: Beaver Creek Cooperative Telephone Company, Canby Telephone Association, Cascade Utilities, Inc., Citizens Telecommunications Company of Oregon, Clear Creek Mutual Telephone Company, Colton Telephone Company, Eagle Telephone System, Inc., Gervais Telephone Company, Helix Telephone Co., Molalla Communications Company, Monitor Cooperative Telephone Company, Mount Angel Telephone Company, Nehalem Telecommunications, Inc., North-State Telephone Co., Oregon-Idaho Utilities, Inc., Oregon Telephone Corporation, People's Telephone Co., Pine Telephone System, Inc., Pioneer Telephone Cooperative, Roome Telecommunications Inc., St. Paul Cooperative Telephone Association, Scio Mutual Telephone Association, Stayton Cooperative Telephone Company, TDS Telecom and Trans-Cascades Telephone Company.

II. SUMMARY

OTA's Reply Comments congratulate the Joint Board Members and Staff for developing creative conceptual outlines for modifying the federal universal service fund. However, OTA's Reply Comments express concerns about the operational aspects and administrative costs of the four proposals. OTA's position is that due to the uncertainty created while the industry addresses intercarrier compensation reform it is premature to consider any of the four proposals at the present time. Instead, resources are better allocated to address phantom traffic issues and to expand the contribution base for the federal universal service fund. The "same support" rule should also be addressed.

III. CONCERNS OVER THE JOINT BOARD PROPOSALS

In this section of these Reply Comments, OTA will list concerns it has gleaned about the four proposals from its own review of the proposals and its review of the Opening Comments.

1. There are Not Sufficient Details Expressed About the Four Proposals to Fully Evaluate the Proposals.

Each of the four proposals sets out in broad outline the goals and key elements for the proposal. OTA agrees with the many comments submitted in the opening round which point out that there is not sufficient detail known about any of the four proposals to do a full, meaningful evaluation of the proposals.² OTA understands that each of the four proposals is premised on moving decision making on universal service issues to the state level, where the state commissions are presumably closer to and in a better position to evaluate universal service needs. However, the proposed mechanisms set forth in the four Joint Board proposals and the way in which the proposals would actually work are not described in sufficient detail to be able to articulate whether the proposals are better or worse than the existing system. As AT&T aptly put it: “The devil is in the details.”³ For this reason alone, it is premature to adopt any of the proposals.

2. OTA is Concerned that the Four Proposals Will Not Provide Support which is Specific, Sufficient and Predictable.

In trying to understand the proposals, OTA is concerned about how the mechanisms themselves would work. In particular, OTA is concerned about the way in which some of the proposals would combine the non-rural and rural funds. In order to be able to evaluate a proposal, OTA seeks details on:

² See, among others, Comments of the Iowa Utilities Board at p. 4; Comments of the National Association of State Utility Consumer Advocates on Joint Board High-Cost Support Proposals at p. 3-4; and Comments of the Rural Independent Competitive Alliance at p. 5.

³ Comments of AT&T Corp. on Proposals to Modify High-Cost Support Rules at p. 6.

- the methods that would be used to allocate support between non-rural companies that may not receive federal universal service support in a state today and the rural companies in that state.
- the level of support that is available to rural telephone companies under the proposal.
- the treatment of any reduction in support to rural companies and the basis in the proposal to evaluate whether the support that is provided is sufficient.
- if there is not a reduction in support to rural companies, and non-rural companies receive support that they do not receive today, the mechanism to address concerns about growth in the size of the fund.
- when statewide averages are used, how the proposal addresses rural differences.⁴
- the use of state block grants in a way to make support predictable.
- specific mechanisms which encourage investment in rural infrastructure.
- aspects of the proposals that rely upon or use census data, specifically the level of data and the parameters to be used.
- the method of accounting for the fact that in many rural company study areas there may be a relatively concentrated population of a few hundred or few thousand in a few square miles and scattered populations of a few dozen or a few hundred over hundreds of square miles.

⁴ As stated by the Rural Task Force: “Because Rural Carriers represent only a fraction of the overall industry, their addition in determining the national average cost benchmark changes the average by only a small amount, even though as a group the average total cost of service for Rural Carriers is more than twice that of non-Rural Carriers. For the same reason, averaging the cost of Rural Carriers with the costs of all other carriers within a state would eliminate funding for many Rural Carriers.” In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Rural Task Force Recommendation to the Federal-State Joint Board on Universal Service (Released September 29, 2000) at p. 19.

The information to evaluate how universal service funds will be allocated and the manner of allocation of universal service fund resources among recipients are not dealt with in any detail or with clarity in any of the four proposals. OTA believes that information and data sufficient to evaluate these issues are necessary to be able to comment in a meaningful way on the proposals. Without this type of information, it is not possible to determine whether any proposal is an improvement over the existing mechanism.

3. OTA is Concerned that a State Block Grant Program Will Not Produce Results Which are Sufficient or Predictable.

A consideration which appears to be absent from each of the four proposals is that telecommunications plant is not investment that is generally regarded as depreciated in three or five years. Decisions made by regulatory commissions stretch out the recovery of investment in telecommunications infrastructure over long periods of time. This raises a substantial question whether a state block grant program can provide support which is sufficient and predictable.

Many of the comments in the opening round argue that state block grant programs will harm universal service goals by actually discouraging investment.⁵ Each of the proposals that contain a state block grant program must provide sufficient detail and rationale as to why that proposal will encourage investment in rural infrastructure. The advocates of a proposal must present sufficient detail to allow others to evaluate whether such a state block grant program will provide sufficient and predictable support. The four proposals lack the necessary level of detail in their present form.

⁵ See, e.g., FairPoint Communications Comments at p. 2; Comments of the Western Alliance and Independent Telephone and Telecommunications Alliance at p. 13 (WTA Comments).

4. OTA is Concerned About the Administrative and Transactional Costs that the Four Proposals May Bring.

OTA agrees with the many comments made in the opening round that the administrative costs associated with the four proposals may be quite high.⁶ The Iowa Utilities Board, for example, expresses strong concerns about the increased regulation apparent in each of the four proposals, the transactional costs brought by the four proposals, and the burdens placed on rural companies and customers by each of the four proposals.⁷ There are many questions about administrative and transactional costs that need to be answered. OTA believes that before a proposal can be evaluated, there must be data on the administrative costs for each of the proposals. For example, what is the administrative cost for a state block grant program? It is the observation of OTA's members that existing federal block grant programs often carry with them high administrative costs.

Data, or at least more information, is needed about the transactional costs in each of the four proposals for the companies (and, thus, customers). At a minimum, there should be estimates of the costs to develop the models that one or more of the proposals contemplate using. There should be an analysis of whether the costs are then worth the benefits that may be brought by implementing one or more of these programs. To evaluate the proposals that are on the table, more information is needed before anyone can meaningfully evaluate the cost and cost/benefit questions which need to be addressed.

5. OTA is Concerned that Proposals to Freeze Per-Line Support are Misdirected.

While each of the four proposals are correctly concerned about the growth in the size of

⁶ See, among others, Bell South Comments at p. 4-5; National Telecommunications Cooperative Association Initial Comments at p. 9; and Comments of TDS Telecommunications Corp. on Proposals to Modify Rules Relating to High-Cost Universal Service Support at p. 6-7 (TDS Comments).

⁷ Comments of the Iowa Utilities Board at p. 3-5.

the federal high-cost program, none of the four proposals has done an adequate job of analyzing the cause of the growth of the support. In its opening comments, OPASTCO presents an analysis that pinpoints the cause in the recent growth of the federal high-cost program as the growth in CETC support.⁸ This analysis is supported by a similar analysis set forth in the Comments of Balhoff & Rowe, LLC.⁹ The proponents of each of the four proposals must provide a more detailed analysis of how the proposal they present will address the cause of the growth in the size of the fund due to increasing support for CETC entities. That analysis is lacking. Instead, some of the Joint Board proposals assume that a solution to growth in the high-cost fund is to freeze ILEC support upon competitive entry. This proposal is misdirected and would inhibit investment in rural infrastructure.

OPASTCO presents a very thoughtful observation about the negative effect that freezing per-line support would cause:

Major components of rural ILECs' network costs are fixed and do not correspondingly disappear when a customer discontinues service to a line. If rural ILECs were uncertain as to whether they will continue to receive support that is sufficient to achieve full recovery of their network costs, they would be reluctant to continue investing in infrastructure, particularly the multi-functional infrastructure capable of providing advanced services. Furthermore, support is not "predictable" if a change in the method of calculation is triggered by an external event (competitive entry), the timing of which cannot be predicted by the ILEC.¹⁰

As pointed out by TDS: "Because freezing per-line support would de-link the amount of USF funding that rural telephone companies recover from the costs they incur in providing service, implementing this proposal would drastically reduce rural investment incentives for carriers who serve areas in which one or more CETC has been designated."¹¹

⁸ Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies beginning at p. 15 (OPASTCO Comments).

⁹ Comments of Balhoff & Rowe, LLC, beginning at p. 16.

¹⁰ OPASTCO Comments at p. 5-6.

¹¹ TDS Comments at p. 10.

6. OTA is Concerned About the Potential for Legal Challenges to any New Mechanism.

The existing mechanism may have some problems. However, it has one very large advantage over any new program: it is in place and it is working.¹²

Many of the Opening Comments raise questions about the legal sufficiency of the four proposals.¹³ OTA is very concerned that if one of the four proposals is adopted and then overturned on legal challenge, the ability to continue to develop rural infrastructure and the benefits to rural customers may be in grave danger. OTA cautions that the proponents of each of the four proposals should be very sure that their proposal can pass legal muster before that proposal is moved forward. There is too much at stake to risk being unsure of the legal foundation for the proposal.

¹² As pointed out by USTA and OPASTCO, despite its complexity, the current universal service mechanism is meeting its objectives: rural telecommunications infrastructure is in place, investment is continuing and rural customers receive the benefits of high quality telecommunications service. Comments of the United States Telecom Association at p. 2 and OPASTCO Comments at p. 2.

¹³ See, among others, National Telecommunications Cooperative Association Initial Comments at p. 7; TDS Comments at p. 6-7; and Comments of the WTA at p. 5. As the Alaska Commission points out, the federal universal service fund is a national program: “Universal service is a national goal by which all consumers benefit regardless of the state where they reside. Customers in Florida benefit by the ability to call customers in Alaska and vice versa. As customers nationwide benefit by universal service, regardless of what state they live in, it is unreasonable to place an artificial boundary (i.e., the state geographic area) as the dividing line between state and federal universal service responsibilities.” Comments of the Regulatory Commission of Alaska at p. 7.

IV. OTA'S SUGGESTION FOR A COURSE OF ACTION

As OTA views the current environment, a serious question is raised about whether a major change in direction for the federal universal service program is the best use of resources at the present time.¹⁴ OTA applauds the efforts made by the Joint Board Members and Staff to bring forth creative ideas concerning ways in which the universal service program can be modified. However, OTA recommends that wholesale changes to the current mechanism are premature at this time.

The industry is spending tremendous resources addressing intercarrier compensation reform. Those efforts are ongoing and require the focus of everyone in the industry. OTA believes that as the intercarrier compensation reform picture becomes clearer, then proposals to modify the federal universal service mechanism can be brought into sharper focus so that universal service changes can occur in conjunction with intercarrier compensation reform or as an immediate second step.

The current universal service mechanism has worked effectively in the past and may continue to meet the goals of universal service in at least the short-term future with minor modifications. Certainly the rapid rise in the size of the fund is a concern.¹⁵ On that issue, OTA respectfully suggests that work begin immediately on developing an expanded contribution base. The idea of basing USF contributions on a working number concept appears to be gaining momentum. OTA suggests that the Joint Board recommend to the FCC that work immediately

¹⁴ For example, the opening comments point to the need to first address intercarrier compensation. See, e.g., Comments of AT&T Corp. on Proposals to Modify High-Cost Support at p. 2.

¹⁵ However, as OPASTCO and Balhoff & Rowe, among others, point out the cause of the recent increases in the size of the fund is the funding flowing to competitive eligible telecommunications carriers, not incumbents. Many advocate removal of the "identical support" rule as a step to address this increase. OPASTCO Comments beginning at p. 15. Comments of Balhoff & Rowe, LLC beginning at p. 16 and, also, beginning at p. 34.

begin on determining whether a working number concept should be the basis for USF contributions and defining the details of how a working number concept would be deployed.

Another issue that can, and should, be addressed immediately is phantom traffic. Oregon Commissioner Baum has indicated that phantom traffic issues are an immediate concern. OTA supports the efforts of the Oregon Public Utility Commission to get out front on this issue and notes the Oregon Commission has a workshop on phantom traffic issues scheduled for January 17, 2006.

In addition, many of OTA's members have been involved in a significant intrastate phantom traffic docket in the State of Oregon. A copy of the Docket Report from the Oregon Exchange Carrier Association to the Oregon Public Utility Commission is attached as Attachment A. This Report recommends that the issue of phantom traffic be addressed as soon as possible. The suggestion for implementing a solution to phantom traffic centers around "truth-in-billing" concepts that would require the jurisdictional and carrier information for every call to be properly populated and transmitted. There is a significant amount of detail that is contained in the Docket Report that supports this concept. OTA suggests that the Joint Board recommend to the FCC that phantom traffic issues be addressed immediately.

A third issue that can be addressed is the identical support rule. An assumption should not be made that the proper way to cap growth in the size of the fund is to freeze incumbent per-line support upon competitive entry. Rather, the Joint Board should look at why there is rapid growth in the size of the fund. That rapid growth is most recently due to a substantial growth in support for CETCs.

The concept that each ETC should receive support based on its own costs deserves strong consideration. FairPoint argues that a change to the “identical support” rule to require that support be based on each carrier’s costs correctly identifies the costs for serving high-cost areas:

Both wireline and wireless networks are relatively low cost in cities and towns where population concentrations are high. Similarly, both technologies become very costly on a per-customer basis in remote and sparsely populated rural areas. In the recent ETC Designation Order, the FCC has attempted to ensure that wireless ETCs commit to serve throughout the designated service [area] through the requirement to submit a five-year build-out plan. Mr. Gregg’s proposal to base support on the actual cost of the CETC would appear to be a more efficient means to accomplish this objective, and would provide additional investment incentives, as high-cost support would only be provided as high-cost areas were actually served. (Footnotes omitted.)¹⁶

NTCA argues that:

The identical support rule provides CETCs with the same per-line support regardless of their cost structure and defeats the Commission’s guiding principle of ‘competitive neutrality.’ The rule has undermined the Commission’s ability to ensure that CETC support is not excessive and used for the purposes intended. (Footnotes omitted.)¹⁷

The Joint Board should give strong consideration to recommending elimination of the identical support rule.

¹⁶ FairPoint Comments at p. 7.

¹⁷ NTCA Comments at p. 12.

V. CONCLUSION

OTA believes that the Joint Board Members and Staff should be commended for stepping up to the plate with conceptual outlines on how the universal service mechanism can be changed. OTA suggests that it is in the best interest of all parties if the efforts to construct the detail of the four proposals be left until more is known about the direction of intercarrier compensation reform. Instead, those resources can be used effectively to address changes to the contribution base for universal service funding and addressing the issue of phantom traffic. A first step to address growth in the size of the fund is to repeal the “identical support” rule.

Once more is known about intercarrier compensation reform, then efforts can be undertaken to answer the many questions that are raised by the four proposals, develop the details of those proposals and evaluate whether one or more of the proposals should move forward.

Respectfully submitted this 31st day of October, 2005.

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